

Commercial Agency/Distribution Agreements

In Lebanon, commercial representation agreements are governed by Decree-Law No. 34 of August 5, 1967. The Lebanese legislator enacted Decree-Law 34/67 in order to provide the Lebanese commercial representatives with strong protection vis-à-vis the major international entities they may be representing in Lebanon.

Decree-Law 34/67 defines the persons and entities subject to its provisions and provides them with certain legal advantages with respect to the applicable law, and the courts having jurisdiction over the disputes that may arise from the commercial representation agreements.

a- Persons and entities subject to the provisions of Decree-Law 34/67

Article 1 of Decree-law No. 34/67 describes the persons and entities subject to its provisions and divides them into the following two categories:

- The first category is a general category that includes the commercial agents whose regular and independent profession is to engage in negotiations to finalize the sale, purchase, rental or provision of service agreements and, if necessary, accomplish such operations in the name of the producers or merchants and for their account, i.e, all the commercial agents, whether exclusive or not, are included in this category.
- The second category is more specific. It consists only of the merchants who sell, for their own account, the goods that they purchase by virtue of a contract appointing them as exclusive agents or distributors, i.e, only exclusive distributors are included in this category.

b- Conditions required for the exercise of the profession of commercial representative

Article 3 of Decree-Law 34/67 provides the following two conditions for the exercise of the profession of commercial representation in Lebanon:

1. Lebanese citizenship

- The commercial representative must be a Lebanese national.

- In the case of a partnership (Société en Nom Collectif- SNC) or limited liability company (Société à Responsabilité Limitée- SARL), the following conditions should be met:

- a- The majority of the partners must be Lebanese nationals,
- b- The majority of the company's capital must be held by Lebanese nationals, and
- c- The person authorized to sign on behalf of the company must be a Lebanese national.

- In the case of a joint stock company (Société Anonyme Libanaise- SAL), the following conditions should be met:

- a- The shares of SALs operating as commercial representatives must all be nominal,
- b- The majority of the company's capital must be held by Lebanese nationals, and
- c- Two-thirds of the members of the Board of Directors, the Director General and the persons authorized to sign on behalf of the company must all be Lebanese nationals.

2. Place of business in Lebanon

The commercial representative must have a place of business in Lebanon.

c- Requirement of a written agreement

Paragraph 1 of Article 2 of Decree-Law 34/67 provides that all commercial representation agreements entered into after the date of Decree-Law 34/67 must be in writing. However, Decree-Law 34/67 does not provide for any sanction for the absence of a writing. According to Lebanese scholars, and case law, the writing is required for publicity purpose. Consequently, if a commercial representation agreement is not registered with the Register of Commerce, it would have no effect vis-à-vis third parties.

d- Sanctions for the termination or refusal to renew a commercial representation agreement

Article 4 of Decree-Law 34/67 provides that the commercial representative is entitled to compensation if the commercial representation agreement is:

- 1- terminated, without the representative being at fault or for no other "justifiable" reason. In this case the compensation shall be equivalent to the damages sustained and to the unrealized profit.
- 2- not renewed at the end of its term, provided that the activity of the representative has led to an increase in "the number of the principal's clients", a successful promotion of the "principal's trademark", and the agent was prevented from reaping the benefits of such success.

As to the mode of calculation of the indemnity, the principle is that the judge will determine the amount of the indemnity at his/her sole discretion. The law does not provide for any method of calculation.

In practice though, the termination indemnity is usually based on the average net annual profits of the representative derived from the distribution of the principal's products. Said annual net profits will then be multiplied by a factor of between 1 and 5, depending on the circumstances of each case, and taking into account the economic conditions and other variable conditions. The average net annual profits are usually calculated by a court appointed "expert" who can examine the books of the commercial representative to

determine the commercial representative's annual profits during a certain number of years, and then divides such profits by the number of years during which the profits were made

e- Exclusive jurisdiction of the Lebanese courts to settle disputes resulting from the commercial representation agreements

Article 5 of Decree-Law 34/67 provides that, notwithstanding any agreement to the contrary, the courts of the place in which the representative conducts his/her/its activity shall have jurisdiction over all disputes resulting from the commercial representation agreement. The courts have consistently ruled that the provision of said article 5 is of public order and that any contractual clause to the contrary is null and void. It is questionable whether foreign laws and courts would enforce court decisions based on this provision.

f- Applicable law

Even though Decree-Law 34/67 does not include a specific provision to that effect, the Lebanese courts have consistently ruled that the provisions of Decree-Law 34/67 are of public order and apply to all commercial representation agreements to be performed in Lebanon